

No. 2022-1642

United States Court of Appeals
for the Federal Circuit

CARAVAN CANOPY INTERNATIONAL, INC.,

Appellant

v.

Z-SHADE CO., LTD., COSTCO WHOLESALE CORPORATION, LOWE'S
HOME CENTERS, LLC, SHELTERLOGIC CORP.,

Appellees

*Appeal from the Patent Trial and Appeal Board of the United States Patent and
Trademark Office in IPR 2020-01026*

**AMENDED MOTION FOR LEAVE TO ACCEPT LATE-FILED
JOINT APPENDIX**

STEPHEN M. LOBBIN, ESQ.
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Counsel for Patent Owner/Appellant

JANUARY 27, 2023

CERTIFICATE OF INTEREST

Pursuant to FCR 28(a)(1) and 47.4, counsel for the Patent Owner/Appellant certifies the following:

1. The full name of every party or amicus represented in the case by me is Patent Owner/Appellant Caravan Canopy International, Inc. (“Caravan”).

2. The name of the real party in interest (if the party named in the caption is not the real party in interest): N/A

3. There is no parent corporation or publicly held corporation that owns 10% or more stock in this entity.

4. The names of all law firms and the partners and associates that have appeared for these parties in the lower tribunal or are expected to appear for them in this court, are as follows: Kyle W. Kellar, Jason C. Martone and Steven French of Lewis Roca Rothgerber Christie LLP.

5. Any case pending in this or any other court or agency that will directly affect or be directly affected by this court’s decision in the pending appeal: N/A

6. Information required by FRAP 26.1(b)-(c) that identifies organizational victims in criminal cases and debtors and trustees in bankruptcy cases: N/A

Respectfully submitted,

Dated: January 27, 2023

/s/ Stephen M. Lobbin

Counsel for Patent Owner/Appellant

Pursuant to Fed. R. App. P. 27 and FCR 28(a)(5), Appellant Caravan respectfully moves hereby for leave to file appendix out of time. Appellees have stated they oppose the motion. In support of its motion, Appellant Caravan states as follows:

1. On August 15, 2022, Appellees moved for an extension of time to October 6, 2022 in which to file their response brief.

2. Appellees' motion was granted, therefore the deadline for Caravan to file its reply brief was October 27, 2022. Because Caravan did not file a reply brief, the appendix was due October 27, 2022.

3. Throughout this process, counsel for Caravan worked diligently to prepare the appendix for filing with this Court. Caravan provided a draft appendix to Appellees on July 26, 2022, but never received any comments in response. *See Lobbin Decl.* ¶ 4 (hereinbelow).

4. Caravan mistakenly did not file the appendix timely in accordance with Fed. Cir. R. 30(a)(2), which provides that "if the appellant does not file a reply brief, the appendix must be served and filed within the time for filing the reply brief." Even though the appendix was complete and ready to be filed, because of the press of business in other matters including summary judgment proceedings and trial preparation, Caravan was remiss and did not timely file the appendix. *See Lobbin Decl.* ¶ 5 (hereinbelow).

5. Notably, not one of the Appellees ever brought the error to Caravan's attention. *See* Lobbin Decl. ¶ 6 (hereinbelow).

5. On January 20, 2023, the court dismissed the appeal for failure to file the appendix.

6. It was at this time that Caravan discovered its inadvertent mistake, and Caravan immediately filed the appendix on January 20, 2023.

7. Granting this motion would not prejudice Appellees. Rather, denying leave as requested herein would prejudice both parties, as this Court would be unable to review citations to the appendix found in both parties' briefs.

8. Caravan has at all times exercised reasonable diligence to comply with the provisions and rules of this Court, and has not previously sought leave to file any documents out of time. *See* Lobbin Decl. ¶ 9 (hereinbelow).

9. Caravan's Certificate of Interest is included herewith.

CONCLUSION AND STATEMENT OF RELIEF SOUGHT

For the foregoing reasons, Caravan respectfully requests that this Court grant leave for, and accept the late filing of, the Joint Appendix filed January 20, 2023.

Respectfully submitted,

January 27, 2023

/s/ Stephen M. Lobbin
Counsel for Plaintiff-Appellant

DECLARATION OF STEPHEN M. LOBBIN

I, Stephen M. Lobbin, declare and state as follows:

1. I am Founding Partner of SML Avvocati P.C., counsel to Appellant Caravan Canopy International, Inc., (“Caravan”) in the above-referenced action. I have personal knowledge of the facts stated herein, and if called to testify as a witness, I could and would testify competently thereto.

2. I make this declaration in support of Caravan’s Amended Motion for Leave to Accept Late-Filed Joint Appendix.

3. After seeking and receiving an extension of time, Appellees filed their response brief on October 6, 2022, and because Caravan did not file a reply brief, the appendix was due October 27, 2022.

4. Caravan provided a draft appendix to Appellees on July 26, 2022, but never received any comments in response. Throughout the process, Caravan worked diligently to prepare the appendix for filing with this Court.

5. Even though the appendix was complete and ready to be filed, because of the press of business in other matters including summary judgment proceedings and trial preparation, Caravan was remiss and did not timely file the appendix.

6. Following the missed deadline, none of the Appellees notified Caravan of the error.

7. On January 20, 2023, the court dismissed the appeal for failure to file the appendix.

8. It was at this time that Caravan discovered its inadvertent mistake, and Caravan immediately filed the Appendix on January 20, 2023.

9. Caravan has at all times exercised reasonable diligence to comply with the provisions and rules of this Court, and has not previously sought leave to file any documents out of time.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 and the laws of the United States of America that the foregoing is true and correct and if called to testify, I could and would competently do so.

Executed on this 27th day of January 2023 at San Diego, California.

/s/ Stephen M. Lobbin

PROOF OF SERVICE

I hereby certify that on January 27, 2023, I electronically filed the above document(s) with the Clerk of Court using CM/ECF which will send electronic notification of such filing(s) to all registered counsel.

/s/ Stephen M. Lobbin

CERTIFICATE OF COMPLIANCE

This motion complies with the typeface and type style requirements of Fed. R. App. P. 27(d)(1)(E), 32(a)(5) and Rule 32(a)(6), and the type-volume limitation of Fed. R. App. P. 27(d)(2)(A), as it does not exceed 5,200 words.

/s/ Stephen M. Lobbin

